

SUBDIVISION IMPROVEMENT AGREEMENT

General Instructions

The model subdivision improvement agreement is intended to be used in situations where improvements required for final approval or conditional approval to be extended beyond the three year preliminary subdivision plat approval. A subdivider may request a subdivision improvement agreement to guarantee the construction of improvements in a timely manner.

Procedures

A subdivider requesting a subdivision improvement agreement shall follow the following procedures:

- a. The subdivision improvement agreement must be complete and submitted with the application for final plat;
- b. The term of the agreement in Section 2 is no more than eighteen (18) months following final plat approval;
- c. All Department of Environmental Quality and other state/local agency approvals required for final plat shall be obtained prior to entering into a subdivision improvement agreement.

Model Agreement

Return after recording to:

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the BOARD OF COMMISSIONERS of Lake County, Montana, Party of the First Part and hereinafter referred to as the COUNTY, and

(Name of Developer)

a

(Individual, Company or Corporation)

located at _____,
(Street Address/P. O. Box) (City, County, State, Zip)

Party of the Second Part and hereinafter referred to as DEVELOPER.

WITNESSETH:

THAT WHEREAS, the Developer is the owner and developer of a new subdivision known as

(Name of Subdivision)

located at _____
(Location of Subdivision)

and,

WHEREAS, the County has conditioned it's approval of the final plan of _____(Name of Subdivision), upon the conditions as set forth in the Preliminary Plat of the Subdivision being completed and all improvements, as cited in "Exhibit A" have not been completed at this time, and the Developer wishes to bond for the completion of those improvements set forth in "Exhibit A"; and

WHEREAS, the County' Subdivision Regulations require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements as evidenced by a County accepted competitive bid or itemized estimate of contracted improvements endorsed by a licensed public engineer overseeing the installation of the improvements, which is included herewith as "Exhibit B"; and

WHEREAS, the estimated total cost of construction of said improvements is the sum of
\$_____.

NOW THEREFORE, in consideration of the approval of the final plat of said Subdivision by the County, the Developer hereby agrees as follows:

1. The Developer shall deposit as collateral with the County a financial security that has been deemed

to be acceptable as determined by the Lake County Board of Commissioners, in the amount of \$ _____. Said financial security shall have an expiration date of not less than sixty (60) days following the date set for completion of the improvements, certifying the following:

- a. That the financial security guarantees funds in the sum of \$ _____ the estimated cost of completing the required improvements in _____.
(Name of Subdivision)
 - b. That if the Developer fails to complete the specified improvements within the required period, the financial security will be payable to the County immediately, and without further action, such funds as are necessary to finance the completion of those improvements up to the limit of the collateral credit stated in the financial security;
2. That said required improvements shall be fully completed by _____, 20_____.
3. That upon completion of the required improvements, the Developer shall cause to be _____ filed with the County a statement certifying that:
- a. All required improvements are complete.
 - b. That the improvements are in compliance with the minimum standards specified by the County for their construction and that the Developer warrants said improvements against any and all defects for a period of one (1) year from the date of acceptance of the completion of those improvements by the County.
 - c. That the Developer knows of no defects in those improvements.
 - d. That these improvements are free and clear of any encumbrances or liens.
 - e. That a schedule of actual construction costs has been filed with the County.
 - f. All applicable fees and surcharges have been paid.
4. The Developer shall cause to be filed with the County copies of final plans, profiles, grades and specifications of said improvements, with the certification of the registered professional engineer responsible for their preparation that all required improvements have been installed in conformance with said specifications.

IT IS ALSO AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS, TO-WIT:

That the Developer shall provide for inspection of all required improvements by a registered professional engineer before the Developer shall be released from the Subdivision Improvement Agreement.

That if the County determines that any improvements are not constructed in compliance with the specifications, it shall furnish the Developer with a list of specific deficiencies and may withhold collateral sufficient to insure such compliance. If the County determines that the Developer will not construct any or all of the improvements in accordance with the specifications, or within the required time limits, it may withdraw the collateral in the financial security and employ such funds as may be necessary to construct the improvement or improvements in accordance with the specifications. The unused portions of the collateral shall be returned to the Developer.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year herein before written.

(Name of Subdivision/Developer/Firm)

by _____

(Title)

STATE OF MONTANA
COUNTY OF _____

On this _____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this day and year first above written.

Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

LAKE COUNTY BOARD OF COMMISSIONERS

ATTEST:

Clerk and Recorder

By: _____
Chairperson

By: _____
Deputy

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EXHIBIT A

List of incomplete improvements required by the conditions of approval as fixed to the preliminary plat by the Lake County Board of Commissioners, which includes all specifications necessary to secure completion of the improvement as installed.

EXHIBIT B

A copy of the county accepted highest bid for the cost of installation of the improvement as required by section II.P of the Lake County Subdivision Regulations.

Or;

A copy of the county accepted itemized estimate of contracted improvements endorsed by a licensed public engineer overseeing the installation of the improvements and evidence that the contract to complete the work will be transferable to Lake County if necessary.

POSSIBLE FORMS OF IMPROVEMENTS GUARANTEES

Comment:

The following are examples of common types of security used to guarantee a subdivision improvement agreement, although others may also be acceptable. The type of security used must be deemed reasonable and approved by the governing body. The listing of a specific type of security below does not indicate the governing body will deem its use reasonable; The subdivider shall provide one or more of the following financial security guarantees in the amount of 125 percent of the estimated total cost of installing all required unfinished improvements.

1. Joint Certificate of Deposit

The subdivider shall provide the governing body with a certificate of deposit from a reputable lending authority subject to governing body approval.

- a. The certificate of deposit shall be in the name of the subdivider as primarily owner, and the Board of Lake County Commissioners as secondary owner authorized to make transactions including redeeming the certificate.
- c. The certificate of deposit shall require a minimum of three signatures, two of which are a county commissioner, to redeem the funds from the account.
- d. The maturation date of the certificate shall, at a minimum, meet the term of the agreement and shall automatically renew.
- e. The certificate of deposit shall be held by Lake County as collateral until the improvements have been deemed complete and accepted by Lake County.
- f. The certificate of deposit shall be released to the subdivider after the maturation date if the required improvements are complete. If the improvements are not complete, the developer may secure a new certificate of deposit for the estimated cost of completing the improvements on that date.
- g. The subdivider shall be required to sign an acknowledgement at the time the improvements have been deemed complete and the certificate of deposit is returned.

2. Joint Checking Account

The subdivider shall provide the governing body with evidence that a joint checking account has been opened at a reputable lending authority subject to governing body approval.

- a. The joint checking account shall be in the name of the subdivider, as primary owner, and the Board of Lake County Commissioners, as secondary owner authorized to make transactions including redeeming the funds from the account
- b. The joint checking account shall require a minimum of three signatures, two of which are a county commissioner, to redeem the funds from the account.
- c. The funds from the checking account shall be released to the subdivider after the maturation date if the required improvements are complete.

3. Subdivision Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of _____. The bond must be in effect until the completed improvements are accepted by the governing body.

4. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the governing body.

Where an escrow account is to be used, the subdivider shall give the governing body an agreement with the bank guaranteeing the following:

- a. That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period.
- b. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

5. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

6. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements

in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

7. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision shall be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created. If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the board of county commissioners to create a rural improvement district pursuant to Section 7-12-2102, MCA.

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the county clerk and recorder and shall be deemed to run with the land.

8. Irrevocable Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

- a. That the creditor guarantees funds in an amount equal to 125% of the cost, as approved by the governing body, of completing all required improvements.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor shall immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.